

PROTEST FEE PAID

15-01156 DC

JEFFRY T. NIERMEYER  
DIRECTOR

# **SALT LAKE CITY CORPORATION**

DEPARTMENT OF PUBLIC UTILITIES  
WATER SUPPLY AND WATERWORKS  
WATER RECLAMATION AND STORMWATER

RALPH BECKER  
MAYOR

March 7, 2015

Kent L. Jones, PE  
Utah State Engineer  
1594 West North Temple, Suite 200  
P.O. Box 146300  
Salt Lake City, UT 84114


Re: Water Right 57-10463 (D7197)

Dear Mr. Jones:

This letter is to provide information concerning Water Right 57-10463 (D7197) (the "Diligence Claim") submitted by Old Farm Home Owners Association ("Old Farm"). As outlined in the explanatory section, the Diligence Claim has been filed to document the historical use of water flowing from a spring into Hill's Ponds and used to irrigate 0.78 acres located in "Lot 1, Section 6, T2S, R1E, SLB&M." Pursuant to an exchange contracted executed in 1905 (see enclosed), Salt Lake City provides certain water to Hill Ditch Irrigation Company which also flows into Hill's Ponds and is used for irrigation on the lands owned by Old Farm ("Exchange Water"). Old Farm is the majority shareholder in Hill Ditch Irrigation Company.

Therefore, Salt Lake City requests that the State Engineer determine whether the Diligence Claim water is supplemental to the Exchange Water for the designated acreage prior to approval of the Diligence Claim. Salt Lake City further requests ongoing flow measurements for water diverted from the spring.

Thank you,

  
Jeff Niermeyer  
Director

Enclosure

cc: Tom Ward, Laura Briefer, Dave Maiorano, Rusty Vetter, Tracie Kirkham

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APR 07 2015

WATER RIGHTS  
SALT LAKE

1530 SOUTH WEST TEMPLE, SALT LAKE CITY, UTAH 84115

TELEPHONE: 801-483-6900 FAX: 801-483-6818

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AND BE IT FURTHER RESOLVED that the Mayor of Salt Lake City enter into and execute for and in behalf of the City the following contract with B. B. Bitner, William H. Park, John D. C. Hamilton, James C. Hamilton, Mary Ann Hamilton, Jane D. Hill, Emma S. Hill, William H. Hill, James Gordon and Charles Park:

A G R E E M E N T.

THIS AGREEMENT, made this 28th day of June A. D. 1905, at Salt Lake City, Utah, by and between Salt Lake City, a municipal corporation of Salt Lake County, State of Utah, party of the first part, and B. B. Bitner, William H. Park, John D. C. Hamilton, James C. Hamilton, Mary Ann Hamilton, Jane D. Hill, Emma S. Hill, William H. Hill, James Gordon and Charles Park, parties of the second part, WITNESSETH:

THAT WHEREAS the parties of the second part are the owners of a portion and of the right to the use of a portion of the waters of Big Cottonwood Creek flowing in Salt Lake County, Utah;

AND WHEREAS the party of the first part desires to procure from the parties of the second part the right to the use of said waters:

NOW THEREFORE be it, and it is hereby mutually agreed as follows, to-wit:

1. The parties of the second part hereby grant, bargain and sell to the party of the first part all of the water and all of the rights to the use of the water owned by the parties of the second part flowing in Big Cottonwood Creek and which have ~~been~~ heretofore been used by the parties of the second part through what is known as Hill Ditch in Salt Lake County, Utah, only, however, until the time that the parties of the second part shall be entitled to again take and use the said water as hereinafter provided, upon the failure of the party of the first part to keep the covenants herein provided by it, the party of the first part to be kept.

2. The party of the first part, in consideration of the covenants of the parties of the second part hereby agrees with the parties of the second part that it, the party of the first part, will perpetually and continuously deliver from the 1st day of April until the 1st day of October of each and every year hereafter, for the use of the parties of the second part, at the place hereinafter provided, a continuous stream or flow of water which stream or flow of water shall be equivalent to seven one hundred and fiftieths (7/150) of the water flowing in said Big Cottonwood Creek, as shall from time to time be determined by the measurements hereinafter provided for, and which said water shall be suitable for the purposes of irrigation.

3. For the purpose of determining the quantity of water flowing in said Big Cottonwood Creek, measurements thereof shall be made at the mouth of Big Cottonwood Canyon on the 1st day of April, the 15th day of April, the first day of May, the 15th day of May, the 1st day of June, the 15th day of June, the 1st day of July, the 15th day of July, the 1st day of August, the 15th day of August, the 1st day of September, the 15th day of September, and the 1st day of October of each and every year hereafter, and the total quantity of water found flowing at the mouth of Big Cottonwood Canyon at each of the measurements above provided for shall be considered, for the purposes of this contract, as the quantity of water flowing in the said Big Cottonwood Creek until the time of the next succeeding measurement; provided, however, that if the said measurements shall be made at a point below the intake of what is known as Butler Ditch, then and in that event the quantity of water flowing in Butler Ditch shall always be added to the water found flowing at each of said measurements.

4. The party of the first part shall have the right to deliver the said water to the parties of the second part from any source that it, the party of the first part, may see fit. The said water herein provided to be delivered to the parties of the second part shall be delivered to them by the party of the first part in what is known as Hill Ditch at the point on Big Cottonwood Creek where the Hill Ditch now connects with said Big Cottonwood Creek, in Salt Lake County, Utah.

5. On or before the 5th day of January of each and every year hereafter, a board of three commissioners shall be chosen in the manner following, to-wit: One of said commissioners shall be chosen by the party of the first part, and one shall be chosen by the parties of the second part, and the two parties so chosen by the parties hereto shall choose the third member, provided, however, if the two parties chosen by the parties hereto fail for a period of ten days to choose a third member then the parties of the second part shall choose said third member; and provided further that if either of the parties hereto fail to choose a member on or before the 5th day of January of each and every year hereafter, then and in that event the other party hereto shall have the right to choose three disinterested persons, who shall constitute said Board of Commissioners.

When the said Board of Commissioners shall have been chosen as above provided, the said commissioners shall have the right to exercise and perform the duties and powers herein conferred upon them until such time as their successors shall be chosen. The decision of any two of said commissioners upon any question or matter which they are empowered to decide shall be binding and conclusive upon each of the parties hereto.

It shall be the duty of said commissioners to measure the waters flowing in said Big Cottonwood Creek at the time and place above mentioned, and they shall, also, within two days of the date of making each of said measurements, report to each of the parties hereto the total quantity of water by them found flowing in said creek, and the finding of said commissioners as to the quantity of water flowing in said creek shall, for the purposes of this contract, be considered as the quantity of water flowing therein, until the time of the next succeeding measurement.

6. The said commissioners, within two days of the date of making each of the measurements of Big Cottonwood Creek above provided for, shall measure at the place of delivery the water which it is above provided shall be delivered by the party of the first part to the parties of the second part; provided, however, that the parties of the second part shall have the right to require the said commissioners to measure the said water to be delivered to the said parties of the second part at any time or times which they, the parties of the second part, shall see fit, and the finding of said commissioners, or a majority of them as to the quantity of water being delivered to the parties of the second part by the party of the first part shall be binding and conclusive upon each of the parties hereto.

7. The party of the first part hereby agrees that it will cause to be constructed, at its expense, at the point of measurement upon Big Cottonwood Creek and at the points where water shall be delivered to the parties of the second part, good and sufficient weirs, and that it will continue to keep the same in good repair; and also that it will cause to be constructed at the point where the party of the first part shall divert the said water from the Big Cottonwood Creek, good and sufficient gates, which shall be so constructed that the water flowing in Big Cottonwood Creek can be readily and conveniently returned into said creek channel, in case the parties of the second part shall at any time exercise their right to revest themselves with the use of the waters of Big Cottonwood Creek, and it agrees to keep the said gates in good repair.

The party of the first part also agrees that it will from time to time pay all of the expenses that shall be incurred in making the various measurements of water, as herein provided, including the compensation of the commissioners, together with all expenses incurred in carrying into effect this contract.

8. The party of the first part hereby agrees to maintain all of the existing rights of the parties of the second part to the waters and to the channels of said Big Cottonwood Creek, and to bring and defend, at the expense of it, the party of the first part, any and all suits for the purpose of maintaining said rights.

9. It is hereby mutually agreed that if the party of the first part shall at any time hereafter fail to deliver to the parties of the second part at the point above mentioned the full quantity of water which is above provided shall be delivered to the parties of the second part by the party of the first part, and provided that said default shall continue for a period of twenty-four hours, then, and in that event the parties of the second part shall have the right to immediately retake and shall be immediately restored to the waters of said Big Cottonwood Creek, which are being used by the party of the first part under the terms of this contract, and for the purpose of retaking and again using the said water the parties of the second part shall have the right to immediately return the waters of said Big Cottonwood Creek into the original channel of said creek, and shall have the right to the use of said water during all the time that said default shall continue, and said right may be exercised by the parties of the second part as often as the party of the first part shall be in default.

It is expressly understood and agreed, however, that upon any failure of the party of the first part to deliver to the parties of the second part the full quantity of water above provided to be delivered to the parties of the second part for a period of six months, all of the rights of the party of the first part to the use of the waters of Big Cottonwood Creek now belonging to the parties of the second part, shall, at the option of the parties of the second part, upon thirty days' notice in writing given to the party of the first part, immediately cease and terminate, and the rights of the parties of the second part to the use of the waters of Big Cottonwood Creek above granted to the party of the first part shall thereupon be immediately vested in the parties of the second part as fully and completely as though this contract had never been made.

The right of the parties of the second part to retake the said water of Big Cottonwood Creek and the right of the parties of the second part to terminate the rights of the first party hereunder shall and is hereby declared to be a cumulative remedy and shall in no wise be construed to deprive the parties of the second part of any remedy at law or in equity which the parties of the second part might otherwise have to enforce their rights under this contract.

10. If at any time hereafter the right of the party of the first part to the use of the water of Big Cottonwood Creek shall be fully and perpetually terminated, the party of the first part shall not be liable to the parties of the second part for any damages accruing after the date of such perpetual termination.

IN WITNESS WHEREOF the party of the first part has caused these presents to be executed by Richard P. Morris, Its Mayor, and its corporate seal to be affixed hereto, and the parties of the second part have thereunto set their hands at the time and place first above written.

SALT LAKE CITY (SEAL)

J. S. Critchlow,  
City Recorder.

(Signed) Richard P. Morris,  
Its Mayor

By Wm. D. Neal, (Signed)  
Deputy

(Signed) James C. Hamilton

(Signed) John D. C. Hamilton

(Signed) Maria S. Hamilton (his wife)

(Signed) James Gordon

(Signed) William H. Hill

(Signed) Charles Park

her  
(Signed) Mary Ann X Hamilton  
her mark

Witness: Ashby Snow

(Signed) Jane X Hill  
mark

Witness: Ashby Snow

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(Signed) her  
Emma X Hill

(Signed) mark  
Mark B. Hamilton

(Signed) William H. Park

(Signed) Sarah Park

(Signed) Mary C. Hill

(Signed) Her  
Elizabeth X Gordon

(Signed) Sarah E. Park mark

State of Utah, )  
County of Salt Lake ) ss.

On the 28th day of June, A. D. 1905, personally appeared before me John D. C. Hamilton, and Maria S. Hamilton, his wife, James C. Hamilton, Mary Ann Hamilton, Jane D. Hill, Emma S. Hill, William H/ Hill, James Gordon, and Charles Park, the signers of the above instru-  
ment, who duly acknowledged to me that they executed the same.

Wm. H. Bramel  
Notary Public.

My commission expires  
May 19-1909. (SEAL)

(COPY)

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State of Utah,                    )  
County of Salt Lake            ) ss.

On the 30th day of June, 1905, personally appeared before me William H. Park and Sarah Park, his wife, and Mary B. Hamilton, wife of James C. Hamilton, and Elizabeth Gordon, wife of James Gordon, and Mary C. Hill, wife of William H. Hill, and Sarah E. Park, wife of Charles Park, <sup>and</sup><sub>A</sub> the signers of the above instrument, who duly acknowledged to me that they executed the same.

Maxwell R. Brothers

Notary Public.

My commission expires  
April 8, 1908. (SEAL)